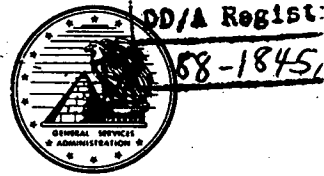




Information Security Oversight Office
Washington, DC 20405



August 23, 1988

Dear Mr. Huffstutler:

Although it may seem during August that no one's around and not much is happening, the protection of national security information can never take a vacation. For that reason, August is an excellent time to issue a few important notes and reminders about the information security program. We call these matters to your personal attention and ask that you circulate them throughout your agency as may be appropriate to their subject matter. Thank you for your continuing cooperation.

Sincerely,

A handwritten signature in cursive script, reading "Steven Garfinkel".

Steven Garfinkel
Director

Mr. Rae M. Huffstutler
Deputy Director for Administration
Central Intelligence Agency
Washington, DC 20505

Enclosures

REMINDER ABOUT THE STANDARD FORM 311

With the approach of the end of the fiscal year, it is again time for a reminder that you must provide the Information Security Oversight Office (ISOO) with your completed Standard Form 311, "Agency Information Security Program Data," for FY 1988, no later than Monday, October 31, 1988. These data serve a number of purposes, the most visible of which is their aggregated appearance in ISOO's Annual Report to the President. This Report is used by the Administration and the executive branch agencies, and by the Congress, the media and the interested public. Therefore, as managers of the Government-wide ~~information~~ security system, we must be cognizant of the critical role that these data play in support of the system's credibility and performance. Your continuing efforts to submit these data in a timely fashion are a very important part of this process.

UPDATE ON THE STANDARD FORMS 189 AND 189-A

During the past few months, there have been several significant developments regarding the status of the Standard Form 189, "Classified Information Nondisclosure Agreement," and the Standard Form 189-A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)."

A. The Litigation

1. Ruling that Section 630 Is Unconstitutional

As you were advised in ISOO's letter of December 29, 1987, on December 22, 1987, the Congress added a last minute rider to the Omnibus Continuing Resolution for Fiscal Year 1988 (Section 630 of Public Law 100-202) that compelled ISOO to impose a temporary moratorium on any new signings of the SF 189 and SF 189-A. On May 27, 1988, in the cases of National Federation of Federal Employees v. United States, et al., Civil Action No. 87-2284-OG, American Federation of Government Employees et al. v. Garfinkel, et al., Civil Action No. 87-2412-OG, and American Foreign Service Association, et al. v. Garfinkel, et al., Civil Action No. 88-0440-OG, Senior Judge Oliver Gasch of the United States District Court for the District of Columbia ruled that Sec. 630 is unconstitutional. Judge Gasch declared, "The statute impermissibly restricts the President's power to fulfill obligations imposed upon him by his express constitutional powers" Subsequently, plaintiffs noted a direct appeal to the United States Supreme Court on this issue, but the Supreme Court will not reconvene until October 1988, by which time Section 630, as an FY 1988 appropriations measure, will have expired.

2. Ruling on the Constitutionality and Legality of the Nondisclosure Agreements

On July 28, 1988, Judge Gasch ruled again in the cases of National Federation of Federal Employees v. United States and American Federation of Government Employees v. Garfinkel, this time on the issue of the constitutionality and legality of the SF 189 and the CIA Form 4193. Basically, the decision held in favor of the Government's position that these nondisclosure agreements are both constitutional and legal. However, Judge Gasch also ruled that in order to keep the scope of the term "classifiable," as used in paragraph 1 of the SF 189, within constitutionally acceptable standards, all employees who have signed any form that uses that term must be provided either: (a) a copy of the ISOO's definition of "classifiable," as previously defined in the Code of Federal Regulations (52 Fed. Reg. 48367, December 21, 1987); or (b) notice that term "classifiable" is stricken from the agreement and shall not be the basis for liability. He further ordered that all affected employees must receive a copy of the definition or notice of the striking no later than 60 days from his order.

-2-

On August 12, 1988, the Department of Justice, on behalf of the Government defendants, filed a "Motion to Alter or Amend Judgment" with Judge Gasch. Defendants argue in this motion that publication of the definition of "classifiable" in the Federal Register provides constructive notice to all affected persons that is sufficient as a matter of law. Defendants also move that, if the court will not alter its previous order that requires the dissemination of copies of the definition, the court amend it to permit the 60 days to run from the time of its ruling on the defendants' Motion to Alter or Amend, and to permit the enforcement, as they come into compliance, of the term "classifiable" for those persons who do not receive a copy of the definition until more than 60 days have passed. ISOO will provide further instructions to the agencies on this issue as soon as the court rules on the Government's motion.

B. The Possibility of New Legislation

As of the date of this notice, H.R. 4775, a bill to provide appropriations to certain agencies for FY 1989, contains a rider at Section 621 that is identical, except for the pertinent fiscal year, to Section 630 of Public Law 100-202, discussed above. Passage of this legislation will greatly increase the likelihood that the Supreme Court will confront the issue of its constitutionality during its 1988-89 term. ISOO will keep you apprised of the status of this legislation, and of any impact it might have should it be enacted, which now appears likely.

C. The Moratorium on Executing the SF 189 and SF 189-A

While these actions have been taking place, ISOO has maintained its moratorium on having additional persons sign either the SF 189 or SF 189-A, as appropriate. ISOO plans to lift this moratorium in the very near future, when it issues a revised "Classified Information Nondisclosure Agreement" to be used in lieu of the existing version of both the SF 189 and SF 189-A. In issuing the revised form, ISOO would not seek its execution by every cleared Government or industry employee who has already executed an SF 189 or an SF 189-A, since these total over two million individuals. Instead, through regulation, ISOO will instruct agencies to enforce the older agreements in a manner that is consistent with the enforcement of the revision. Also, every individual who has signed an SF 189 or SF 189-A will be permitted to substitute a signed copy of the revised agreement at his or her own choosing. You will receive these instructions and information copies of the revised nondisclosure agreement at the time the pertinent rules are published in the Federal Register.

PROHIBITION AGAINST THE REMOVAL OF CLASSIFIED RECORDS

At the beginning of this year, ISOO wrote to each agency head as a reminder to take precautions against the unauthorized removal of classified information, especially during the last year of a presidential administration. We raise these points with you again because of their critical importance to both our national security and the integrity of the information security system.

°Classified information, including "extra" copies, is never personal property.

°No one, including the highest agency officials, may remove classified information from the Government's control.

°Classified document custodians have a duty to ensure that classified materials are not removed from an agency's custody without proper authority.

°Agency security officials or other designated personnel have a responsibility to debrief all cleared personnel who are departing the agency.

°Debriefings should include reminders that the obligation to protect classified information, including that stored in one's memory, does not end with a person's departure from Government service; and that a person who no longer has a security clearance is still subject to criminal and civil liability for the unauthorized disclosure of classified information learned while he or she was cleared.

ISOO SYMPOSIUM

On Tuesday, December 6, 1988, ISOO will sponsor a one-day symposium entitled, "National Security Information: The Reagan Years and Beyond." Lieutenant General Colin L. Powell, Assistant to the President for National Security Affairs, will deliver the opening address. He will be followed by other distinguished speakers representing different backgrounds and perspectives, and an afternoon discussion/debate among the speakers and audience on the most topical and controversial issues that concern national security information. The symposium will be held in the Dean Acheson Auditorium of the Department of State, which seats approximately 750. There will be no charge for attending, but reservations will be required. ISOO will provide each agency with a specified number of attendance slots to be filled by you with persons who are concerned with information security policy. More information will follow shortly. In the interim, however, agencies may want to consider approximately how many reserved slots they will be requesting.